STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 12, 2014
v	No. 314562 Wayne Circuit Court
EDWARD LEE DARDEN, JR, Defendant-Appellant.	LC No. 12-003994-FC

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a jury trial, of second-degree murder, MCL 740.317, reckless driving causing death, MCL 257.626(4), reckless driving causing serious impairment of a body function, MCL 257.626(3), failure to remain at the scene of an accident resulting in death, MCL 257.617(3), and failure to remain at the scene of an accident resulting in serious impairment of a body function, MCL 257.617(2). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to a term of 25 to 40 years for the second-degree murder conviction, 10 to 22-1/2 years each for the reckless driving causing death and failure to remain at the scene of an accident resulting in death convictions, and 4 to 7-1/2 years each for the reckless driving causing serious impairment and failure to remain at the scene of an accident resulting in serious impairment convictions, all sentences to run concurrently. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant's convictions arise from his involvement in a car accident that killed one person and seriously injured another. The accident occurred when defendant, the driver of a Dodge Ram pickup truck traveling at a high rate of speed in a residential area, while under police surveillance, disregarded a red traffic signal at an intersection and collided with a minivan that had entered the intersection on a green signal. After the collision, defendant and two other passengers from the pickup truck fled on foot. The driver of the minivan was killed and a front-seat passenger in the minivan sustained numerous serious injuries.

II. SUFFICIENCY OF THE EVIDENCE – SECOND-DEGREE MURDER

Defendant first argues that the evidence did not support his conviction of second-degree murder because there was insufficient evidence that he acted with the requisite malice to be

convicted of that offense. We review a claim of insufficient evidence de novo, viewing the evidence in a light most favorable to the prosecution, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). We do not interfere with the fact-finder's role of determining the weight of evidence or the credibility of witnesses. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). In addition, it is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013).

"In order to convict a defendant of second-degree murder, the prosecution must prove: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Roper*, 286 Mich App 77, 84; 777 NW2d 483 (2009) (citation and quotation marks omitted). In this case, defendant challenges only the third element, malice. "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id*. (citation omitted). "Thus, the offense of second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences." *People v Goecke*, 457 Mich 442, 466; 579 NW2d 868 (1998). Further, malice can be inferred from evidence that a defendant "intentionally set in motion a force likely to cause death or great bodily harm." *Peoplev v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998).

The evidence at trial indicated that defendant was driving a pickup truck while attempting to flee from the police. According to witnesses, he drove through a residential area at a high rate of speed and collided with the victims' minivan after disregarding a red traffic signal at an intersection. Contrary to defendant's contention that the evidence showed that he was only traveling at a speed of 40 to 45 miles an hour, Officer Dominic Medina testified that he pursued defendant's vehicle while traveling approximately 50 miles an hour, and that he was unable to keep up with defendant's vehicle. The evidence, viewed in the light most favorable to the prosecution, supports an inference that defendant's vehicle was traveling in excess of 50 miles an hour in the residential area, where the speed limit was 25 miles an hour. See *Reese*, 491 Mich at 139. A witness, Juddie McCoy, testified that she observed defendant's vehicle shortly before the collision and described it as traveling "super fast" and at a "high rate of speed" in the residential area. Defendant argues that James Duff's testimony that he heard screeching before the impact supports an inference that defendant attempted to apply his brakes before the collision. However, Duff explained that the "screeching" sound he heard was "tires squealing," which other witnesses had similarly described hearing as defendant's vehicle accelerated. Duff testified that he observed the collision, but he did not offer any testimony indicating whether he saw defendant attempt to stop or slow down before the collision. Conversely, McCoy, who was driving a vehicle immediately behind the minivan, testified that she saw the pickup truck as it was approaching the intersection and realized that it was not going to stop at the intersection. She blew her horn in an effort to alert the driver of the minivan in front of her to stop as that vehicle approached the intersection on a green traffic signal, but defendant's pickup truck

entered the intersection and struck the minivan. According to McCoy, the pickup truck did not make any effort to stop before the collision.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find beyond a reasonable doubt that defendant drove at dangerously excessive speeds through a residential area while attempting to evade the police, during which he ignored a red traffic signal and proceeded into an intersection, colliding with the victims' vehicle in the intersection without having made any effort to stop. The jury could conclude that the evidence demonstrated that defendant was acting with a wanton and willful disregard of the likelihood that the natural tendency of his conduct would cause death or great bodily harm to other motorists or bystanders. *Roper*, 286 Mich App at 84; *Djordjevic*, 230 Mich App at 462. Accordingly, the evidence was sufficient to establish the requisite malice to support defendant's conviction of second-degree murder.

III. DOUBLE JEOPARDY

Defendant next argues that his multiple convictions for failure to remain at the scene of an accident resulting in death, MCL 257.617(3), and failure to remain at an accident scene resulting in serious impairment of a body function, MCL 257.626(2), violate the double jeopardy prohibition against multiple punishments for the same offense. Defendant did not raise this double jeopardy issue in the trial court. Accordingly, this issue is not preserved. *People v Wilson*, 242 Mich App 350, 359-360; 619 NW2d 413 (2000). We review the unpreserved claim that defendant's protection from double jeopardy rights was violated for plain error affecting substantial rights. *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008); *Wilson*, 242 Mich App at 360.

Both the United States and Michigan Constitutions protect a defendant from being placed twice in jeopardy, or subject to multiple punishments, for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Smith*, 478 Mich 292, 299; 733 NW2d 351 (2007). The double jeopardy protection against multiple punishments for the same offense is not a limitation on the Legislature's power to define crime and fix punishment. *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003). It is only a restriction on a court's ability to impose more punishment than intended by the Legislature. *Smith*, 478 Mich at 316; *Calloway*, 469 Mich 451.

In this case, defendant was convicted of one count of violating MCL 257.617(2) and one count of violating MCL 257.617(3). MCL 257.617 provides:

> (1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. . . .

(2) Except as provided in subsection (3), if the individual violates subsection (1) and the accident results in serious impairment of a body function or death, the individual is guilty of a felony punishable by imprisonment for not more than 5 years or be a fine of not more than $5, 000.00, or both.

(3) If the individual violates subsection (1) following an accident caused by that individual and the accident results in the death of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

These convictions arose out of the fact that one of defendant's victims was killed and one was seriously injured. Defendant argues that the elements of both offenses are substantially identical and prohibit the violation of the same social norm, indicating that the Legislature did not intend to impose multiple punishments for the two crimes.[1] Even assuming arguendo that such was the case, "double jeopardy does not apply to crimes committed against different victims, even if the crimes occurred during the same criminal transaction." *People v Hall*, 249 Mich App 262, 273; 643 NW2d 253, remanded in part on other grounds 467 Mich 888 (2002).

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra

[1] We note that defendant's reliance on *People v Robideau*, 419 Mich 458, 486-487; 355 NW2d 592 (1984), for this proposition is misplaced in light of the explicit overruling of *Robideau* by our Supreme Court in *Smith*. See *Smith*, 478 Mich at 315.